

Testimony on Assembly Bill 301
By Representative Jim Soletski
Assembly Committee on Small Business
December 4, 2007

Mr. Chairman, thank you for scheduling a hearing on Assembly Bill 301. I introduced Assembly Bill 301 to address concerns of a constituent who is a secondhand dealer of video games in both Representative Van Roy's and my districts. The intent of the legislation is two-fold: create a level playing field for all merchants who sell used computer toys and games and audio and video recordings and other optical media and to create a shorter holding period for merchants who are required by local municipal regulation to file reports electronically.

2005 Wisconsin Act 58 amended our state law regulating secondhand article dealers to require that certain articles be held for not less than 21 days after the date of purchase or receipt; previously it had been 10 days. The holding period is to allow time for law enforcement to collect and review required inventory records in an effort to curtail the sale of and help retrieve stolen goods. 2005 Wisconsin Act 58 also added to regulated secondhand articles prerecorded video games or discs, audio tapes or discs, or other optical media, now referred to as "media articles" in Assembly Bill 301.

The articles added by Act 58 may have a particularly short shelf life as video games or music discs often lose their popularity in a short time period. The 21 day holding period in itself makes it more difficult to successfully operate a resale business where turn-around time can be crucial. This is further complicated by the fact that the law only applies to dealers who "primarily" engage in the business of purchasing or selling used "media articles". Thus, a merchant selling both new and used products, if primarily selling new articles is exempt under state law, even though the merchant may sell a greater volume of used products than used-only dealers sell. It seems fair that, like the state regulation of the sale of used motor vehicles, the same rules should apply to all dealers. We do not exempt motor vehicle dealers from laws regulating used vehicle sales because they sell mostly new vehicles. Should that fair play not apply here? Otherwise, the state is putting certain businesses at a competitive disadvantage with their competitors. I do not believe that was the intent of Act 58. AB 301 addresses that concern by including all merchants who sell used "media articles" under the same anti-theft prevention rules.

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The increased holding periods established in Act 58 addressed concerns about the need for enough time to manually gather and review inventory reports. However, some municipalities are requiring that these reports be filed electronically on a daily basis. After such an ordinance was enacted in the City of Eau Claire, City Attorney Stephen C. Nick reported that there were no more boxes filed with files, no more weekly rounds to the stores to collect and file reports, and, most importantly, no more needle-in-a-haystack searches through the paper files in an attempt to find the right slip when property is reported stolen. Plus, the City of Eau Claire put another detective back on the street due to cutting their costs. But, the more efficient electronic reporting may mean more costs for the merchant. The overall economic cost effectiveness of these anti-theft laws is debatable. However, if we allow municipalities to require merchants to help make efforts to fight theft more efficient through electronic filing, should merchants not also reap some benefit? I believe that they should. That is why AB 301 reduces the holding period to 7 days, when merchants are required to file electronically; thus, allowing merchants to be able to sell such time sensitive merchandise sooner.

In conclusion, I would note that while there is a fiscal cost to this legislation, an amendment to the bill that I had drafted at the suggestion of the Department of Agriculture, Trade and Consumer Protection negates that cost.

Again, thank you, Mr. Chairman for holding this hearing, today.

December 4, 2007

To: Members, Assembly Committee on Small Business

FROM: Mark Sgarioto, GB Games, Green Bay, WI

RE: Testimony on Assembly Bill 301

Thank you for holding a hearing on AB 301. I regret that that I am unable to be in Madison, today. I hope you will take a few minutes to let me explain why we need these changes.

The first change of removing the word primary in the description of who is classified as a secondhand dealer needs to take place to eliminate a loop hole in the current law. With this word in place businesses that engage in buying and selling used merchandise as well as selling new, are excluded from current laws for secondhand article dealers if their primary business is selling new. For example, Game Stop is to my understanding the largest retailer of used video games in the state. However they do not have to follow the same laws as other secondhand dealers because the majority of their business is selling new. Competitors that sell primarily new are not required, by state law, to keep records of used merchandise bought from the public. More importantly, from a business prospective, they do not have to hold merchandise bought from the public for the 21 days that secondhand dealers are required to do. This gives them an unfair competitive advantage because they can pay more for merchandise because they do not have to hold it. Other stores have to buy merchandise and hope the price at retail does not drop while it is sitting for 21 days. We are thus required to tie up thousands of dollars in our back room while competitors are not. By eliminating the "primarily" used requirement from our current law we are closing a loophole, where the sale of stolen property might not be reported to police, and we are creating an even playing field for all secondhand dealers, no matter the percentage of used sales.

Secondly, I would like to address the issue of holding merchandise for 21 days. The purpose of this is to give local police departments enough time to possibly track down stolen merchandise that may have been sold to honest businesses. We all agree that the criminal is a common enemy to all of us and needs to be dealt with appropriately.

However, the burden that is put on small business to hold merchandise for 21 days does not justify the return on merchandise recovered. We are asked to tie up thousands of dollars in inventory and take thousands of dollars in additional mark down on merchandise while it sits in our back room. I will use video games as my example because this is the type of trade I engage in. Playing video games and watching DVD's has become a large part of the daily lives of many people in our state, as well as our country. This is also an area that is very price competitive. When retail on a new video game drops it often drops \$10 - \$20. When this happens we must drop the prices we sell

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it for used, resulting in selling merchandise at or below what we paid for it. By going from the old pre-2006 10-day holding period to the 21 days our mark downs have increased by several thousand dollars a year. This is happening because merchandise is sitting in our back rooms for longer periods of time than before. These price drops are often on the newer games or DVD's that normally sell within a day or two of putting them out on our shelves.

Again, the purpose of the holding period is to give the police more time to try and track down stolen merchandise. In the past 5 years that I have been in business we have averaged only \$250.00 worth of merchandise identified in our stores as being stolen. Or, about 1/10 of 1% of everything we buy in a year. In Green Bay, where I conduct business, our city recently adopted a new city ordinance that requires all secondhand article dealers, antique dealers, jewelry dealers and pawn shops to electronically file our daily transactions with the Green Bay Police Department. We are required to transmit the names and all personal information of the people selling to us and a description of everything they sell to us on a daily basis. This is so the police can cross reference our data with the records of merchandise reported stolen. We feel that with the advanced use of technology the 21 days holding period becomes even more excessive than before. The police get transactions everyday, not once a week, once a month or even never, as occurred before. Because of this the time needed to possibly track stolen merchandise is cut down to a minimum. Because of these changes we are asking that the holding period be cut back to 7 days from the current 21 days when a business is required to file electronically with their local law enforcement. Please remember under current law many of the businesses dealing in electronic media do not even have to hold merchandise because of the way current law is written.

Thank you for your time and consideration in this matter.

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POSITION STATEMENT ON WISCONSIN A.B. 301: SECONDHAND MEDIA

The Entertainment Merchants Association (EMA) and the approximately 300 retail establishments it represents in the state of Wisconsin oppose Assembly Bill 301.

A.B. 301 would impose recordkeeping, reporting, and product holding requirements on all businesses that purchase or sell secondhand computer toys and games, DVDs, videotapes, CDs, audio tapes, or other optical media and for whom the secondhand goods activity is not their primary business. (Wisconsin already has a comprehensive regulatory scheme for entities whose primary business is secondhand goods.) In addition, these businesses would be prohibited from engaging in transactions involving secondhand media with any unaccompanied minor, unless the minor provides written consent from a parent or guardian to engage in the particular transaction.

While supporting strong laws to make it difficult to sell stolen goods, EMA has serious concerns about the impact of the proposals on the market for used DVDs and video games obtained from its members' customers. We are also concerned that A.B. 301 would single out certain types of secondhand entertainment products for more stringent recordkeeping, reporting, and product holding requirements than other types of secondhand consumer products.

In an era of declining rentals and aggressive price competition among retailers of new videos, "buy/sell/trade" of used DVDs and video games is becoming an increasingly important way for video and video game specialty retailers to promote customer loyalty, as well as augment their revenue streams.

The opportunity to trade in and purchase used video software offers consumers a unique value proposition. For instance, used video game titles have an average price of \$13 – compared to \$34 for new video game titles. The availability of used video game products for sale has enabled a lower-economic demographic, which may not have been able to afford the more-expensive new video game products, to enjoy video games.

Sales of previously viewed DVDs totaled approximately \$1 billion nationwide in 2005. In that year, a major video game specialty retailer generated approximately 26% of its total retail sales and almost 44% of its gross profits from used video game products.

Applying secondhand goods laws to purchases and sales of secondhand DVDs and video games by video and video game retailers could severely impair the ability of these retailers to participate in the used DVD and video game market. The hold requirement of A.B. 301 for secondhand media would be particularly burdensome. Most video and video game retailers do not have large storage areas where they can segregate and keep track of each individual transaction.

EMA also believes A.B. 301 is unnecessary, as many video and video game specialty retailers have policies and procedures in place to discourage thieves from using their businesses to convert stolen goods into cash. These policies and procedures can include:

- No cash for used DVDs and video games, only store credit.
- No purchase of multiple copies of a single title.
- No purchase of unopened items.
- Turndown of sellers that engage in a high volume to transactions at the company's stores.
- Reporting of transactions to LeadsOnline.com, a web-based database of secondhand merchandise used by law enforcement to investigate crimes involving property.

In addition, EMA is concerned that a retailer that provided seller information to law enforcement pursuant to A.B. 301 could be accused of violating the federal Video Privacy Protection Act (18 U.S.C. 2710), which severely limits the release of information about a consumer's video and video game transactions.

Finally, EMA notes that the requirements that would be imposed by A.B. 301 on "non-primary" retailers that engage in "buy/sell/trade" of second-hand entertainment products would not be imposed on "non-primary" second-hand dealers of other types of goods, such as used bicycles, used musical instruments, and used office equipment. EMA believes that second-hand entertainment products should not be subjected to more stringent recordkeeping, reporting, and product-holding requirements than other types of second-hand goods. The requirements are particularly questionable in light of the fact that, given that entertainment products have few distinguishing characteristics that would allow law enforcement to identify an item that had been stolen, there is little basis to believe that the requirements would lead to either a reduction in theft or an increase in recovery of stolen property.

Entertainment Merchants Association

The Entertainment Merchants Association (EMA) was established in April 2006 through the merger of the Video Software Dealers Association (VSDA) and the Interactive Entertainment Merchants Association (IEMA). EMA is the not-for-profit international trade association dedicated to advancing the interests of the \$32 billion home entertainment industry. EMA represents more than 1,000 companies throughout the United States, Canada, and other nations. Its members operate more than 20,000 retail outlets in the U.S. that sell and/or rent DVDs and computer and console video games. Membership comprises the full spectrum of retailers (from single-store specialists to multi-line mass merchants), distributors, the home video divisions of major and independent motion picture studios, and other related businesses that constitute and support the home entertainment industry.

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